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CITY TAXATION AND SKYSCRAPER CONTROL

Taxation was originally, and still is primarily, merely a means for raising revenue. For many years, however, certain taxes have been levied with a secondary object in view, almost, if not quite, as ardently desired as the revenue itself. Thus tariff taxes have had "protection" either as an incidental or as a chief aim; saloon licenses have been made costly with the avowed object of diminishing the number of saloons; and various other forms of tax have been put into effect, or proposed, as much or more on account of the benefits presumed to arise from the secondary effects of the tax as on account of the revenue likely to be produced. We thus have the single tax always prominently kept before us; and certain modifications of the single tax, such as are in effect in Vancouver where land is taxed but buildings are wholly tax-free, have been adopted here and there. Propaganda are now actively under way for the introduction of the Vancouver system in other places. There seems to be, for example, hardly a waking hour in the twenty-four, during which street orators are not actively campaigning on Manhattan Island in an effort to obtain enough public support to introduce the Vancouver system in Greater New York.

While the value of the various secondary objects aimed at through taxes not wholly for revenue is always debatable, it is probably true that public opinion in this country is ready to approve the expediency and morality of levying taxes for such indirect purposes. It is true that one great political party not long ago did take the position that tariff taxes for the purpose of protection were immoral, but that particular portion of the party's platform was not brought strongly into the foreground, and seemed to receive scant consideration. On the other hand, there have been many instances where taxes aimed partly at ends other than the simple production of revenue have seemed to receive popular approval. Indeed, there is at least one important instance in which the federal government imposed a tax with no expectation at all of collecting any appreciable revenue. When the national bank

system was inaugurated, a prohibitive tax was placed upon state bank notes with the avowed object of driving them out of existence. Instances might be multiplied where the levying of taxes having secondary objects has raised little if any objection on moral grounds. The main differences of opinion that arise in each case are over the desirability of the secondary object to be attained, and as to whether or not the proposed tax will in fact achieve such object. Thus in New York one hears little if any objection to the plan of gradually decreasing the tax on improvements, except objections based upon the alleged ruinous effects such a tax system would have upon the community. The *right* to tax one class of property and to exempt another class of property is not very seriously questioned, provided only it be positively demonstrated that the result will be a benefit to society as a whole.

It seems, therefore, rather surprising that there has been no more suggestion than has yet been heard for solving another vital problem of our great cities—that of the skyscraper—through a system of preferential or punitive taxes. The need for a better handling of the problem of the tall building is indeed very great. Such regulation as has thus far been undertaken, both in this country and in Europe, has been based upon prohibitions. In Europe, where the natural order of things is for a rather paternalistic attitude on the part of government, regulations limiting the height of buildings were early in force, and the problem we must meet is, in consequence, there unknown. In America public opinion resents any unnecessary checking of individual liberty of action and initiative by regulations, and only such regulations as experience has already shown to be absolutely necessary will be tolerated. Until recently, any interference on the part of an American municipality to limit the right of an owner to build as high as he might choose would have been deeply resented. Only experience with the evils that have appeared could have made such regulation tolerable. Such attempts at the regulation of the heights of buildings as have so far been made in America have followed the European plan of prohibitions. There are weighty reasons why this plan is not, and cannot be, satisfactory in this country. On the other hand, it is possible to work out a system

of preferential taxes which would seem to meet our needs completely. A brief consideration of the problem to be met will assist in the proper consideration of the proposed remedy.

Theoretically, the owner of ground surface has been supposed to control the space below him as deeply as he could dig, and the space above as high as he was able to build. But when a man puts up a thirty-story or forty-story building, he not only uses the *space* directly above, but he also uses, or cuts off, light and air that otherwise would have gone to his neighbors. He also uses an inordinate proportion of the public water supply and sewer systems; his tenants block the sidewalks by their numbers; and an altogether disproportionate demand is made upon other common social provisions.

A body known as the Heights of Buildings Commission was created by the Board of Estimate and Apportionment of New York City, and this commission made a very exhaustive study of the whole problem of the skyscraper. The commission's report, made in December, 1913, speaks of the lack of sunlight; lack of adequate ventilation; darkened streets; slow and difficult pedestrian and vehicular traffic; loss of health and efficiency through the continuous use of artificial light; and overcrowding of street sub-surfaces by sewers, pipes, wires, and rapid-transit subways, as among the already observed effects following a multiplicity of skyscrapers. The reports of Messrs. Bion J. Arnold and John F. Wallace in connection with the terminal problem in Chicago both practically agree that there is not sufficient downtown street surface in that city for Chicago's present needs. Lawson Purdy, commissioner of taxes and assessments of New York City, speaks of "a condition of street congestion which is the despair of New York," and further states that "employers in some sections are forced to change the luncheon hour of employees in order that the streets may not be packed beyond their capacity." Speaking on the subject of street capacity, the report of the New York Heights of Buildings Commission says:

In case of general panic or catastrophe . . . it would be impossible for all the occupants of all the buildings abutting on certain streets to move in the street at one time, even though the street were cleared of all other traffic. . . . Broadway could hold but 93.6 per cent of its occupants, Trinity Place

and Church Street 86.6 per cent, Nassau Street 69.3 per cent, New Street 44.5 per cent, and Exchange Place only 37.5 per cent. This being the situation today, the question arises as to what might happen in case of a general panic, should the entire district be solidly built up with buildings of the present extreme heights.

It is obvious enough from the preceding that no city can be composed wholly of skyscrapers, nor could a city under present conditions even be uniformly built up to the limits frequently proposed when the problem is discussed, say to a limit of only ten stories. If all Manhattan Island were built up uniformly to a height of only ten stories, every lot being as completely covered as the present building regulations allow, it is probable that the city would be nearly uninhabitable, except upon the upper stories and roofs and around the water front. At present less than one and one-half per cent of the total number of buildings on Manhattan Island are as much as ten stories in height, while there are still many unoccupied spaces.

The cities in this country that have adopted regulations prohibiting buildings above certain heights seem to have set their limits so high that only a little improvement has been made. In Europe really effective limits were set before the skyscraper came. These European cities are planned upon the assumption that it may some time happen that every plot may be built upon up to the allowable limit. The limits for some of the more important European cities are as follows: Berlin 72.2 feet; Cologne 65.6 feet; Dresden 72.2 feet; Edinburgh 60 feet; London 80 feet; Paris 65.6 feet; Rome 78.5 feet; Vienna 82 feet. In order to get a rough idea of the relation between limits in Europe and in America the preceding figures may be compared with the limits set in some of the few American cities that have adopted limits. Baltimore, for instance, has set 175 feet; Boston 125 feet; Chicago 200 feet; Cleveland 200 feet; Indianapolis 200 feet; Los Angeles 150 feet; Milwaukee 225 feet; New Orleans 160 feet. It is obvious that if the European limits are desirable, those in America are excessive. On the other hand, if the American limits are reasonable, the European limits are simply silly.

The fact is that it is impossible in an American city, already partly built up with skyscrapers, to put into effect the sort of height limit that might be adopted had not some real estate

owners already taken advantage of their neighbors and already erected their tall buildings. Common fairness will not permit of such a limit now being enforced against those others while the skyscraper owners continue in the undisturbed enjoyment of their advantage. In other words, it is not feasible to control the skyscraper problem through height limitations in cases where there are already skyscrapers built before the limitations go into effect.

In New York, the worst offender of all, there is now practically no height limit. The Heights of Buildings Commission proposed that the city be divided into zones, and that each zone receive separate treatment as to such limitations. Such a proceeding would of course make effective regulation possible in those zones where the problem is not acute, but cannot prove adequate for the present skyscraper zone. The New York charter has been amended in accordance with the recommendations of the commission, and the Board of Estimate has been given full power to act, after some formalities have been complied with. The commission recommended a height limit at the street line of twice the width of the street, but not less than 100 feet, nor more than 300 feet. Additional height may be had by setting back the building walls 1 foot for each 4 feet of height above the limit at the street line. Chairman Bassett of the commission in a discussion of the report says: "The principal objection to the rule recommended by the commission for extreme heights is that such a limitation still allows very high buildings. This objection is perfectly true." The feeling of the commission which resulted in a rule so described is stated by Chairman Bassett as follows: "Small intensive areas in Manhattan contain buildings of such extreme height that it would be unjust to impose a low-height limit on future buildings to be erected on semi-improved plots of land in these limited areas." In the light of such statements by this high authority it can hardly be denied that an adequate regulation of height in this and similar instances cannot be obtained solely through limits and prohibitions. In fact, it is the opinion of many thoughtful men that a prohibition, of any sort, is about the poorest way to control anything. It is not the way of nature to prohibit. We are left to our own devices—with certain inexorable laws but with few prohibitions. If you go into deep water you must swim or drown, but you are

free to use your own judgment about going in. In the long run, nature's method seems best. If we wish to imitate this method we may make it economically undesirable, or dangerous, to do thus and so, but we should be chary of absolute prohibitions. A prohibition marks a definite boundary line. Progress beyond that line is stopped; and while progress in some particular direction may seem highly undesirable at the moment, or to the prohibiting authority, it must be remembered that all human authorities are fallible, that advancement only follows experimentation, and that a hundred, or a thousand, or more, experiments fail for one that succeeds.

No one can look at the Woolworth Building in New York without being charmed by its beauty. Any prohibitory regulation that would have forbidden the construction of this building, or that would absolutely forbid the construction of a similar building, would be deplorable. Yet there must be found an adequate means for preventing the evil effects already enumerated as having accompanied skyscraper multiplication; moreover, in justice to others, there must be such a system of control as will prevent the injury to surrounding property that the presence of such a building may occasion, or, at the very least, such control as will compensate those others in some degree for the injury suffered. Furthermore, the system of control to be adopted must, unless it is to be cruelly unjust, apply equally to the existing skyscraper and to new skyscraper construction. A system which controls by limiting the heights of new buildings must in greater or less degree fail fully to satisfy any one of these conditions. In addition it always happens that the agitation for, and final passage of, regulations that in effect put a premium upon buildings already planned or constructed, leads to a great rush of plan-filing for skyscrapers which may then be constructed at leisure, it may be years afterward. It is said that during the last month before the new restrictions of Chicago went into effect, building permits for skyscrapers were issued under the old rule to the amount of about \$30,000,000.

The problem of equalizing the lot of real estate owners who have, and who have not, already put up skyscrapers is one of the most serious character. Such a problem is wholly insoluble by any system of height limits applying to new construction only.

Under such a system there is no compensation for the real estate owner whose property has been partly confiscated by neighboring buildings; there is only a permanent prohibition against imitation. Damage to neighboring property is no small matter, but on the contrary may reach huge proportions. The situation now surrounding the newest "largest building in the world," the almost completed Equitable Building, in New York City, illustrates to what proportions such damage may extend.

After the ruins of the old Equitable Building had been cleared away, and the buildings on all sides of the old site had thereby been exposed to view for the first time in their history, many people were struck with the idea that this site should be kept open, and some agitation was begun to have the city take over the space for a downtown park. This agitation came to nothing, as it appeared that the site, a little over an acre of ground, was worth something like twelve millions of dollars. The city, of course, could not spend anything like such a sum for a small park in a purely business district. A study of the interests of the surrounding property-owners, however, published in *Moody's Magazine*, by Mr. Franklin Fishler,¹ developed some rather startling facts. It was shown that the banks, trust companies, and other financial institutions bordering this one acre of ground, had combined financial resources exceeding one billion dollars. Expert real estate men were stated to have estimated that the *increased* rental of the office space surrounding the Equitable site on three sides alone would represent 5 per cent annually on \$8,000,000. This increase was estimated to follow the removal of the *old* Equitable Building, a structure of comparatively moderate height. What the *decreased* rental of the same office space will become, now that the new 36-story structure has made permanently dark caves of hitherto desirable offices, may be guessed from an editorial statement in the same magazine for last June, which says: "Already the prospect of almost utter darkness, in Pine, Cedar, and Nassau streets has driven the Chase National Bank to abandon its quarters in the Clearing House Building and take others at 61 Broadway. Downtown real estate men estimate the depreciation in the value of property facing the new Equitable

¹ XIV, 6 (December, 1912), p. 427.

Building at not less than 30 per cent." It would seem that it would have been financially profitable to the owners of the surrounding property if they could have organized, bought the Equitable site, and presented it to the city for park purposes.

Not many instances of damage to existing property, resulting from the erection of a high building on adjoining property, are so striking as that mentioned in the preceding illustration, but it is hardly open to question that such damage does occur, in greater or less degree, every time a new skyscraper is added to an already crowded district. One may therefore hardly imagine a greater injustice than to provide by law that the owner who has thus injured his neighbors is to be given a permanent monopoly of the light and air he has seized, is to be made secure against competition, and allowed to retain without penalty or sacrifice an unfair advantage over others which is bound to grow more and more valuable as time goes on.

A proper regulation of the skyscraper problem in America would seem to demand that the following conditions be fulfilled: (1) an equalization of conditions between real estate on which a skyscraper has already been erected, and other real estate; (2) a system that will preserve the present minimum at least of light and air in crowded districts, that will look toward gradual betterment of present conditions, but will put a minimum of restriction on builders.

It is possible to devise a system of preferential taxes which would accomplish all of these things. The equalization of conditions between different plots of real estate is a purely financial problem. It may prove very difficult to determine what a difference is, but the adjustment of a determined difference is an easy matter. If the principle of preferential taxes be accepted, any desired amount of favor, small or great, may be shown to one class of property, and any desired restriction may be placed upon another class of property. The possibility of completely meeting condition No. 1 through a system of taxes is therefore evident. It is also obvious that taxes might be imposed that would be so drastic as to force owners of existing buildings to remove their upper stories. It should therefore prove possible to preserve the present

amount of light and air, or to change present conditions if necessary, through a tax system.

So far as concerns restrictions on builders, the minimum of justice requires that a builder pay, not only for his own building, but for damage that he may do to others and to the community as a whole. No less than this will suffice, and no more than this is necessary or desirable. A tax system may also completely fill this requirement. It may be imagined that a tax system, to do all of these desirable things, would be one of infinite complexity, which indeed might be the case if every possible variable were to be taken into account. A very simple system, however, would seem to meet every present essential need in sufficient degree.

For illustration, let it be assumed that after investigation the authorities decide that a given district will have its most desirable development if it be built up to an average height of four stories. Then let a building of four stories have a minimum tax rate. Let a building substantially *equivalent* to a building of four stories on the lot on which it stands have the same tax rate. That is to say, let us figure the gross cubic content, including necessary unoccupied space—ventilating shafts, courts, etc.—of a four-story building completely covering a given lot. Then let any building, of whatever shape, occupying the same lot and having the same cubic content, take the same minimum tax rate as the four-story-building. Let us go farther and say that for any larger building, whatever its dimensions, the part comprising the same gross volume as the ideal four-story building, and lying nearest the ground, shall take the same minimum tax rate. In other words, we divide our larger building into sections, and the first section, equivalent to the ideal four-story building in gross volume, is to take the minimum tax rate. Then in the case of the larger building let the next unit of gross volume (which, to make the illustration as simple as possible, let us take as equal to another four-story building) take a slightly higher tax rate. Let the third unit of volume, in case of a still larger building carry still a little more surtax, and so on indefinitely. The tax rate would perhaps be expressed in terms of cubic feet of gross building volume per square foot of ground surface owned. It must not be supposed that one

building as a whole is to carry a different tax rate from any other building. On the contrary, every building in the same zone is to be treated exactly like any other building. The first unit of volume of any building is to have the minimum rate, whether it is a building of one story, or is the lowest unit of a skyscraper. (The term "building" in this sense is taken as any collection of structures on adjoining plots, which are taxed as a whole. It is not even material that there should be a single ownership.) There can be no claim of discrimination, since no matter how tall the skyscraper, its first unit pays the same tax rate as does the building which has only one unit or less.

It will be observed that any owner, or combination of a group of owners, could make such use of an entire block that all the land except one area might be covered by a one-story structure, while the exception might carry the "tallest building in the world" and still the lowest tax rate might apply to the whole block. In other words, it would be possible to build detached skyscrapers, far enough from each other so that they are of advantage, rather than a detriment, to the community, with their close neighbors fully satisfied with the situation, and without any penalty or surtax falling anywhere. On the other hand, the surtax on excessive "cubic-feet-per-square-foot" may be made heavy enough to make crowding beyond any pre-determined point very unprofitable. The one thing that may not be done is to treat new and old buildings differently. It seems quite probable, however, that surtaxes may be so chosen as to limit new construction to a desirable point without putting an impossible burden upon the upper stories of existing buildings. It will be evident to any intending builder that if a present surtax on his upper stories is not adequate, of itself, to prevent undesirable building operations, a future surtax, perhaps amounting to actual confiscation of those top stories, will be quite possible or even probable. This unvoiced threat, together with a very moderate surtax, would seem likely to be all that is necessary to accomplish the desired ends. If not, the result of the operation of a more drastic surtax may perhaps justly be described as the restoration to other property (through a lowering of taxes) of values previously taken from such property by neighboring

skyscrapers. The zone system would be a rather essential feature in some instances, since it would be unjust to put surtaxes on a zone of high buildings with the result of lowering taxes in a zone some distance away. If the surtax on any existing building operates to reduce the taxes on its immediate neighbors, in the same zone only, it does not seem likely that substantial injustice will result. Ordinary discretion will dictate that the surtaxes be very small in the beginning, and that the system be introduced slowly and in a tentative or experimental fashion.

There would be no danger of builders taking any advantage of preliminary rates that might perhaps be too low. In fact, not the least of the advantages of the surtax plan may be gained without adopting it at all, but merely by seriously discussing it. The effect of a widespread and serious discussion of such a plan of taxation will be to stop at once the further multiplication of most of the evils complained of. The effect of preliminary agitation will be precisely opposite to the results that experience has shown follow the discussion and adoption of a mere prohibition of great height. In the latter case builders rush construction and plan-filing, in order to get ahead of their neighbors before the prohibition takes effect. In the case of the plan under discussion, the mere serious discussion of a possible surtax will make every promoter of a new skyscraper take into consideration the possible adoption of the plan at some future time, and if the probability of ultimate adoption seems favorable, no building will be financed unless it seems likely to be economically feasible under the new system.

Along with a system of surtaxes there might well be some provision for preferential treatment, possibly a total remission of taxes, for an owner of property in a congested district who makes a breathing-space by keeping his property wholly vacant and accessible to the public. Such a tax remission would aim at exactly the opposite result that the proponents of the Vancouver plan wish to achieve, since such tax remission would encourage breathing-spaces in congested districts, instead of encouraging the solid building-up of every privately owned plot—an ideal that seems suddenly to have become popular.

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